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PRIMARY AND RECENT SECONDARY SOURCES FOR THE STUDY OF ROMAN LAW¹

An understanding of Roman law is as necessary for the student of certain ancient Latin classics as an understanding of Greek philosophy is for the student of certain portions of Hellenic literature, that is, jurisprudence is as uniquely a creation of ancient Rome as philosophy is of ancient Athens. While our best Law Schools require Latin among prerequisites, they could as well demand coordination of prelegal studies in Latin with helpful studies in Roman law. Although the study of legal origins in this country is not so much a study of Roman law as it is in European countries, our legal concepts that were originally Roman and our legal procedure patterned after that of ancient Rome would certainly be better understood by prospective lawyers if at least prelegal studies in Roman law were required. But, quite aside from what our Law Schools may do about it, a knowledge of Roman law is essential for students of Latin literature of the Ciceronian type, especially if the Latin language is to be taught as a conveyer of thought.

Numerous terms that recur with more or less frequency and in various forms in Latin writings may often be utterly misunderstood if they are interpreted without reference to their special meanings in Roman law. Mere literal or contextual translations do not always reveal the full connotations of such terms as *accusator*, *actio*, *advocatus*, *appellatio*, *coercitio*, *condemnatio*, *consilium*, *cupidus regni*, *defensor*, *duoviri perduellionis*, *edictum*, *formula*, *furtum*, *imperium*, *iniuria*, *ire consilium*, *iuris consultus*, *iurisdictio*, *ius civile*, *ius dicere*, *ius gentium*, *ius honorarium*, *ius praetorium*, *lex*, *parri- cidium*, *perduellio*, *provocatio*, *quaestio*, *quaestores par- ricidii*, *res iudicata*, *supplicium*, *ultio*, *veto*, *vindex*. Many such terms have one meaning when they are used apart from the law and another special meaning when they are used in connection with a trial or in reference to legal institutions. Hence the teacher of

Latin should be familiar with Roman law in order to be able to interpret rightly certain characteristic types of Latin literature.

The original legal literature of the Romans was written very much as we might casually comment upon customs and practices too familiar to require lengthy discussion. The creative period in Roman legal history was already past before systematic analyses of the law were undertaken. Between the preparation of the Twelve Tables and the codification of the law by Justinian the Roman magistrates were learning law by trial and error for approximately a thousand years. This was by far the most productive millennium in the entire history of jurisprudence. The Twelve Tables, a few of Cicero's orations (e. g. In Verrem, and Pro Caecina), his *De Legibus*, the Institutes of Gaius, the Theodosian Code, and the *Corpus Iuris Civilis* of Justinian would form a good collection of source materials for use in a Latin Seminar studying Roman law and procedure. Most of these materials are readily obtainable. They constitute a fairly complete compendium of information.

I list now works in which, in one form or another, these materials may be found.

(1) *Fontes Iuris Romani Antiqui*². This work was edited originally by Carl G. Bruns³. The seventh edition was prepared by Otto Gradenwitz (Tübingen, P. Siebeck, 1909. Pp. xx, 526).

This work contains first of all the extant portions of the Twelve Tables⁴. The Twelve Tables were little more than a codification (451-450 B. C.) of the old customary law. It is believed that the Gauls in 390 B. C. destroyed the original bronze tablets on which the laws were inscribed⁵. Scholars (Mommsen, Bruns, Gradenwitz, and others) have filled in the lacunae as far as possible with gleanings from the writings of Cicero, Gaius, and others, and with deductions from the extant context. It is certain, however, that in Cicero's day, and even later, much more of the orig-

¹<I think it well worth while to quote here part of a letter which Dr. Urch sent to me with the present paper (after working over his paper on The Origin of the Actio Per Formulam, which was published in THE CLASSICAL WEEKLY 26. 169-171. I had invited him to write some such paper as the present article):

"I have prepared this paper with a view to conveying some notions of Roman law while I was stating the contents of the various sources. I have especially tried to represent the technique of each work, even to the peculiarities in the organization of each. By using the Latin terms of Roman law (in the case of each book, the terms employed by the author), I have attempted to do three things, to convey some notion of the usefulness of the documents and the books to students of Latin, to inform those unfamiliar with Roman law concerning the terms that are commonly legalistic, and to furnish those already familiar with Roman law clues to points about which they may seek information. Throughout I have emphasized the importance of Roman law for the student of advanced courses in Latin, and I have tried to connect the most recent works on Roman law with some of the original sources, with a few old standard works, and with works portraying Roman law in the modern world. In some instances I have offered criticisms from my own comparative studies, although for the most part I have barely indicated the general contents of primary and secondary sources. I have avoided repetitions except in so far as the nature of materials required. The books selected represent as great a variety as possible in a brief paper". C. K.>.

²<In the descriptions of the works discussed, under (1), (3), etc., below, a dagger after the name of an author or an editor indicates that *abest ad plures*. C. K.>.

³<In *Memoirs of the American Academy in Rome*, 2.55-65 (1918), Miss Lucy George Roberts had a paper entitled The Gallic Fire and Roman Archives. In a notice of this volume, in THE CLASSICAL WEEKLY 15.101, 103-104, I gave a brief summary of this paper (103 B). Miss Roberts thought that certain temples, especially temples on or near the Capitoline Hill, were not destroyed, and that "probably all of the international documents deposited on the Capitoline and in the other temples, escaped destruction . . .". Since Miss Roberts thought that the Regia was destroyed, she concluded that " . . . The pontifical records . . . and the Laws of the Twelve Tables apparently perished". I pointed out that these views, if correct, are important. C. K.>.

⁴Berger, in an article entitled *Tabulae Duodecim*, in Pauly-Wissowa, *Real-Encyclopädie der Classischen Altertumswissenschaft*, Zweite Reihe, 4. 1899-1949, presents (in 1932) the latest scholarly interpretation and reconstruction of the Twelve Tables. See also Paul Frédéric Girard, *Textes de Droit Romain* (Paris, Rousseau et Cie, 1923. Pp. xv, 926). This work includes, besides numerous other works, the extant portions of the Twelve Tables. In fact, this collection, edited by a master of his subject, brings together virtually all the materials he has used in his exhaustive studies of the classical period (see Number 7, below, and note 7, below).

inal Twelve Tables was extant than has come down to us. Cicero says³ that in his youth boys were required to learn the Twelve Tables; hence private copies must have been numerous. The language of the Twelve Tables, except in a few instances, had become modernized, that is, as we have the Tables now, their language is nearer to the Latin of classical times than to that of the fifth century B. C.

But the Twelve Tables formed only a small fraction of the texts of Roman law in Cicero's day.

The major portion of Bruns's *Fontes* comprises remnants of statutory law, originating, both before and after the compiling of the Twelve Tables, in the course of eight or nine centuries. These texts represent *leges*, decrees of the Senate, special edicts, and records of transactions that disclose the substance of the law and modes of applying the law. This part of the *Fontes* supplies the materials on which extensive study of Roman substantive law is based. The entire collection gives easy access to original sources on Roman legal and institutional history. Latin is the language of the notes and the comments in the book as well as of most of the documents. The only other language in the book is Greek (in some of the original texts). The collection was compiled from ancient inscriptions and from scattered passages in ancient writings, both legal and non-legal.

(2) Unfortunately, there is no exhaustive collection of materials from Cicero's works suitable for use in the study of Roman law (but see Number 15, below). An edition of such a collection would make a good textbook for an undergraduate class in prelegal Latin. It should include both lengthy discourses and scattered passages from Cicero's orations, essays, and letters. Many of his speeches were delivered before the courts, though mostly in criminal cases. These speeches necessarily contain much legal material. But his philosophical writings also include important interpretative comments on law. Even his letters often refer to legal matters in connection with his private affairs, advice to his friends, and critical judgments on cases at law. Since there is no good collection of such Ciceronian materials, the reader of Cicero's writings is often tantalized by the manner in which material useful in the study of Roman law appears in the most unexpected places in the great lawyer's extant works.

For example, it would be natural to suppose that Cicero's *De Legibus* was his most important contribution to the subject of Roman law. But, as a matter of fact, the *De Legibus*, as well as the *De Re Publica*, is professedly a description of the *ideal* state, though idealizations of actual Roman legal practices and many legal anecdotes are included. For the study of Roman legal procedure, both at Rome and in the provinces, the *Orationes Verrinae* furnish fairly adequate material, from which outlines of cases may be selected, thus making possible the case-method of study of the law (see Number 15, below). Selections from the *Pro Caecina* may provide compact and intricate arguments on legal principles and practices. To such a Ciceronian

collection of documents, as suggested above, certain letters of Pliny the Younger might be appended for the purpose of indicating changes in legal procedure during the century and a half after Cicero's time.

(3) *Gai Institutiones*, or *Institutes of Roman Law* by Gaius. These were edited, with translation and commentary, by Edward Poste†. There is a fourth edition of this work, revised and enlarged, by E. A. Whittuck†, with an historical introduction by A. H. J. Greenidge† (Oxford: At the Clarendon Press, 1904. Pp. lv, 668).

This edition of *Gai Institutiones* is especially interesting and valuable because it appears in the English of great scholars, and because it contains the historical introduction by Dr. Greenidge (whose death while still a young man makes his competence seem all the more remarkable). The text of Gaius adopted for this work is the generally recognized standard text of Krueger and Studemund, who filled up the numerous lacunae only where the missing words may be inferred, at least with a very high degree of probability, from passages in the *Institutes* or in other sources. Various conjectural readings, more or less followed in the translation, will be found in the Appendix of the Poste-Whittuck edition. The sketch by Greenidge (ix-lv), though professedly an 'introduction' to the *Institutes* of Gaius, traces in general outline the development of Roman law from earliest times into the second century of the Empire.

Though the time when Gaius lived may be approximately determined from casual references in his works, little else is known about him. He seems to have been a teacher of law at Rome (150-180 A. D.). Not even his full name is known. It is believed that he was a Hellenized Asiatic and a Roman citizen. His *Institutes* are the only Roman legal work of the earlier period which has come down to us in anything like its original form. He wrote other voluminous works. Among these were a *Commentary*, in six books, on the Twelve Tables, and a *Commentary*, in thirty books, on the Provincial Edict. The latter work seems to have been the only contemporary work of its kind. Apparently Gaius wrote his works, especially the *Institutes*, to facilitate his teaching of the law. Though he may never have practised law, Gaius's opinions attained in the later period equal rank with those of the great jurists (Papinian, Paulus, Ulpian, and Modestinus). Gaius was a favorite author with Justinian's compilers, by whose time his *Institutes* had for a couple of centuries been a textbook for first-year students of law.

The *Institutes* appear in four Books, whose titles are 'Status or Unequal Rights' (*De Personis*), 'Equal Rights' (*De Rebus*), 'Intestacy or Title by Descent', and 'Procedure' (*De Actionibus*), respectively. An abridgment of these in two books forms a part of the *Lex Romana Visigothorum*, the most famous and useful of the early German compilations, an extract of which was designated as *Breviarium Alaricianum*, in memory of Alaric II, who promulgated the original compilation. Though Gaius did not invent the arrangement of the subject-matter of the law under Persons, Property, and Procedure, his adherence to this threefold classification

³*De Legibus* 2. 4.

established that arrangement as more or less regular down to the present day. His greatest claim to distinction lies in his organization of existing materials and in his clear style and excellent method of presentation. In the Poste-Whittuck edition of the Institutes lengthy commentaries are interspersed by the editors between the numerous subsections of books. This edition has an index of thirty-five pages, giving Latin and English legal terms and phrases.

(4) *Theodosiani Libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum Pertinentes*. Edited by Theodor Mommsen† and Paul M. Meyer† (Berlin, Weidmann, 1905. 2 volumes. Pp. cccclxxx, 931; cix, 219).

Part one of volume one of this work contains Mommsen's Prologomena (380 pages), an 'introduction' to the Theodosian legislation. Part two (bound separately) presents the most important materials, under the titles *Gesta Senatus Romani de Theodosiano Publicando* (1-4^{3a}), *Theodosiani Tituli* (5-26), *Theodosiani Libri XVI* (27-906), and *Constitutiones Sirmondianae* (907-921). These latter 'Constitutions', sixteen in all, are so called because they were first published by J. Sirmondus, in 1631. An index for volume one of the Mommsen-Meyer edition of the Theodosian collection locates titles of subjects. Volume two also begins with Prologomena, which serve as an 'introduction' to the *Leges Novellae ad Theodosianum Pertinentes*. The rest of the volume is occupied with the *Leges Novellae* (1-178) of Theodosius II, Valentinian III, and Majorian (some of these had been published in the West), the *Leges Novellae* (181-196) of Marcian, which came from an Eastern collection, and a few miscellaneous *Leges Novellae* (199-208). The volume closes with a brief index of titles. The language of this work throughout is Latin, alike in notes, comments, tables of contents, and introductions. Only a very few scattered quotations are in Greek.

No one but a Mommsen could have directed the editing of such a collection. The Theodosian Code has not been preserved in its entirety. The extant portions had to be gathered from many sources and then reconstructed by the most painstaking textual criticism. The failure of the first attempt of Theodosius II to procure the accomplishment of an ambitious plan to collect all *Leges Generales* enacted since the time of Constantine left the materials his commissioners gathered in such a state of confusion that the final work of codification was actually made more difficult. The first plan inaugurated in 429 aimed at collecting obsolete laws as well as laws still in force. A less ambitious plan, of the year 438, left out the juristic writings, but still included obsolete enactments. The work was finished in little more than two years, was published in February, 438, and went into effect in January, 439. Meanwhile Valentinian III, Emperor in the West, approved the work and had it endorsed by the Roman Senate. The Theodosian Code was superseded in the East by Justinian's legislation, but it continued to be used in the West. There is a number of western manuscripts that contain parts of it.

^aSuch references are to pages. C. K.>

Many of its provisions are preserved in Germanic legal works, especially the *Lex Romana Visigothorum* (see under Number 3, above). In fact, the original Code has been very largely reconstructed from remnants of it that are found in these western codes. In a very real sense the Theodosian Code was the chief factor in the preservation of Roman law in European countries. The Code, as the title of the Mommsen-Meyer edition indicates, was divided into sixteen books. The books were subdivided into titles, under which the individual enactments were arranged chronologically. The Theodosian collection was abridged, and later enactments were added by the Emperors Majorian and Marcian. These later enactments also appear in the Mommsen-Meyer edition.

(4) *Corpus Iuris Civilis*.

The climax in the development and the codification of Roman law came in the work of Justinian and his jurists, chief of whom was Tribonian. The whole collection, prepared under the supervision of this great jurist, is now known as the *Corpus Iuris Civilis*. An adequate discussion of this basic assortment of legal documents would readily run into a volume. The Digest is by far the most important part of this *Corpus Iuris*. It has been said that the Digest has given rise to a greater literature than any other ancient document, except the documents that form the Bible. Hence a brief review of the nature of the Digest, followed by briefer consideration of the Code and the 'Novels', will have to bring this general review of primary sources on Roman law to a close.

(a) Digest and Institutes of Justinian.

Digesta, or *Pandectae*. Edited by Theodor Mommsen† and published, with Justinian's Institutes, in volume one of the *Corpus Iuris Civilis* (ninth Berlin stereotype edition, Berlin, Weidmann, 1902. Pp. [for the Digest] xxxii, 882).

Volume one of the *Corpus Iuris Civilis* opens with sixteen pages of *Index Titulorum Institutionum Digestorum Codicis*. This Index, which appears also in volume two, cites items, laws, legal topics, and legal opinions to be found in the Digest, the Code, and the Institutes. Then come a few pages that serve as an 'introduction' to the Institutes; these pages were edited by Paul Krueger†. The Latin text of the Institutes occupies fifty-five pages, of two columns each. Since the Digest was too difficult for the law student to begin with, the Institutes were designed as an introductory textbook to take the place of Gaius's Institutes, which had for centuries served that purpose. Three jurists, Tribonian, Theophilus, Dorotheus, prepared the new Institutes for Justinian. Their work was published in November, 533. To it was given the validity of an imperial statute on December 30, 533, the day on which the Digest came into force.

Following the text of the Institutes in the Berlin stereotype edition material that serves as an 'introduction' to the Digest appears, in the form of Mommsen's brief Latin Preface, a six-page list of all the titles followed in the Digest, Justinian's order for the compilation of the Digest (*De Conceptione Digestorum*), addressed to Tribonian, Justinian's special instructions

to other leading jurists who were to assist in the work of compilation, his *De Confirmatione Digestorum* which gave to the Digest the force of law as from December 30, 533 (this is presented, both in Latin and in Greek, in parallel columns), and an *Index Auctorum*, which comparison with the fragments has shown to be inaccurate. The Digest, occupying 873 two-column pages, is divided into fifty books, and subdivided into titles of subject-matter, according to Justinian's instructions. Titles are divided into chapters, which frequently are subdivided into sections. Hence, if one wished to find a passage cited as Digest 13. 5. 18. 3, he should turn to Book Thirteen, Title Five, Chapter Eighteen, and Section Three. If he had to locate a passage cited as Digest 13. 5. 12, he should trace it down in like fashion; since a fourth numeral is not given, he would understand that Chapter Twelve is so short that no subdivision was necessary.

The Digest is one of the most remarkable collections in all history. Justinian says in the first paragraph of his *De Confirmatione Digestorum* that in the making of the collection nearly two thousand books (*libri*) containing 3,000,000 lines (*versus*) were read, and that these were condensed into 150,000 lines. He pays great tribute to Tribonian, the able jurist who had charge of the work of collecting, selecting, editing, and condensing. Tribonian was assisted by sixteen persons (one great official, four professors, and eleven advocates). Tribonian had a very good private library. The seventeen men seem to have worked systematically according to a well conceived plan for reading and checking. It would be difficult to understand how in any other way the completed work could have been published in less than three years after the imperial decree ordering the making of the compilation was issued.

Excerpts from thirty-nine authors, and from others whose opinions could be obtained, appear in the Digest. Almost a third of the whole was taken from the writings and the opinions of Ulpian, and about a sixth from those of Paulus. Two other great jurists, Papinian and Modestinus, each supplied a good share of the material. Gaius too is cited as of equal rank with these men. A few fragments are included from 'Republican' jurists. According to Justinian's original instructions, alteration of texts was not only allowed but freely practised. This fact, together with the fact that more material was discarded than was used, has led some scholars to suppose that more loss than gain came to subsequent generations as a result of Justinian's legislation. But who knows what would have happened to the mass of legal literature then extant if some such condensation into convenient form had not been accomplished? Volume one of the Berlin stereotype edition closes with an outline of the *Ordo Librorum Iuris Veteris in Compilandis Digestis Observatus*, worked out by Bluhme over a century ago, and an *Index Librorum*, listing authors and works, jurists and opinions, cited in the Digest.

(b) *Codex Iustinianus*.

Of less importance is volume two of the *Corpus Iuris Civilis*, which contains the Code. It is about half the

size of the Digest. The Code comprises imperial enactments (*Constitutiones*), chiefly those of governments since Constantine I, which, where none existed on essential topics in statute law, were supplemented by some of Justinian's enactments. The Code is divided into twelve books, which are subdivided in the manner of the Digest, though the material under each title is generally less extensive. Book I presents ecclesiastical law, the sources of law, and the duties of higher officials, Books II-VIII private law, Book IX criminal law, and Books X-XII administrative law. The Code contains some unavoidable duplications of material in the Digest.

(c) 'Novels', *Novellae Constitutiones*.

Volume three of the *Corpus Iuris Civilis* gives the so-called 'Novels', or the *Novellae Constitutiones* of Justinian (originating after the Code went into effect), by which it was intended to supplement the Code. The 'Novels' were not compiled in any such orderly fashion as the Digest was. They are of little value except for the study of Justinian's own time. Most of the Novels were concerned with public or ecclesiastical matters. Justinian seems to have hoped that succeeding Emperors would add to this collection, and would thus make it the growing body of the law. But few of them did.

The historical value of the primary sources on Roman law thus far cited, and of other materials too scattered to be mentioned in a brief sketch may be discovered by the study of certain suggestive secondary sources, listed below. These works, which deal with various aspects of Roman legal institutions, I have selected (1) to indicate, with brief analyses, the early monumental works on which students of Roman law still rely, (2) to review briefly the recent works that show the extent to which modern law is based on Roman law, and (3) to describe more particularly the recent works on Roman law, in which Latin classics are commonly cited as original sources.

References to works of Mommsen, Girard, and Cuq (see Numbers 6-8, below) are so frequently made by recent writers on the subject of Roman law that some understanding of these works is involved in an understanding of the more recent works on Roman law. Both German and French scholars in the field have been numerous, in marked contrast to the absence of American scholars. A few Englishmen have produced good works on Roman law. Each productive scholar in this field was influenced by a nationalistic viewpoint; several have made real contributions. But the three mentioned above have so fully used the works of others and have so often been cited in recent discussions of the subject that they may be said to be representative.

(6) *Römisches Strafrecht*. By Theodor Mommsen†, Professor in Berlin University (Leipzig, Duncker and Humblot, 1899. Pp. xxiii, 1078).

This ponderous volume is unique in its original treatment of a subject that is seldom studied even by the most advanced students, for which source-materials are scanty and fragmentary, and in which the Romans, in fact, had made relatively little progress. The notes

occupy on the average half of the page; every conceivable bit of evidence is presented and explained. The work is not controversial, because it had no real predecessors, though it has itself aroused controversial discussions⁴. Mommsen was too often inclined to see legalistic meanings in a Latin term or phrase. Yet his is unquestionably the greatest mind⁵ that has ever been applied to assembling and interpreting documentary evidences on the growth and the nature of Roman law.

The First Book of this volume is a lengthy discussion of terms of the Roman penal law, such as *coercitio*, *crimen*, *damnum*, *delictum*, *noxa*, *poena*, *provocatio*, the imperial *appellatio*, and *supplicium*. The Second Book describes Roman penal authorities, their powers and their methods in various types of communities, and their progressive accumulation of functions through 'Republican' times into the Empire. The Third Book depicts the developing criminal procedure, which tended more and more toward the inquisitorial form as a result of the increasing application of magisterial *imperium* to the repression of crime. The peculiar delicts (civil wrongs), such as *crimen pecuniarium repelundarum*, *dolus*, *furtum*, *homicidium*, *iniuria*, *parricidium*, *perduellio*, *sacrilegium*, and *vis*, are treated in the Fourth Book. The various penalties—death, loss of citizen's rights, corporal punishment, compensation for injury—form the subject-matter of the last book. An eighteen-page factual

index and a nine-page index of sources cited add greatly to the usefulness of the volume⁶.

(7) *Manuel Élémentaire de Droit Romain*⁷. By Paul Frédéric Girard†, Professor in the Faculty of Law of the University of Paris. The eighth edition, virtually unchanged from the seventh edition, is by F. Senn (Paris, Rousseau et Cie, 1929. Pp. xv, 1160).

In his 'Preface of the Seventh Edition' (1924), M. Girard states that 'this book appeared for the first time in fascicles between the month of October, 1895, and the month of April, 1897'. From 1906 to 1918 it passed through six editions. M. Girard states also that an English translation of its introduction has been published in Canada, and that some complete translations were published in Germany, in 1908, and in Italy, in 1909. More than 25,000 copies of this work have been printed. The book, usually cited as *Droit Romain*, is practically a reference work. It would occasionally serve the student of the writings of Cicero, or even of Livy and Tacitus, as a valuable aid in ascertaining the meanings of terms. The original sources most frequently cited, however, appear in the *Corpus Iuris Civilis*, prepared in the time of Justinian. Girard made free use of current literature on his subject, either to borrow authoritative opinions or to contradict doubtful interpretations by his predecessors.

Girard's work is a thorough-going analysis of the substance of Roman law. A general classified bibliography occupies seven pages. A preliminary chapter defines such terms as *ius*, *ius civile*, *ius gentium*, *ius scriptum*, *ius publicum*, and *ius privatum*, and presents the author's plan for the work. Girard argues that 'the analysis of the discussions of Roman jurists is . . . an excellent training in juridical reasoning'. Book I is an historical introduction, with three chapters on legal developments under the old kingdom, the 'Republic', and the Empire, respectively, and a short fourth chapter indicating how Roman law came to be established in western countries during medieval and modern times. Book II analyzes the Roman law of persons, from slaves with no civil status to full citizens with *status civilis*, from the *status familiae* and the legal capacities of persons wholly or partially unrecognized by the law to the moral responsibilities of *universitates personarum* as juridical persons. Book III, longer than the others, deals with the Roman law of property, titles to property, legal servitudes, personal and real, the legal obligations, such as contracts, their execution, termination, and transfer, the testamentary disposition of property, bequests, dowries, etc. Book IV describes civil procedure, the early *actiones*, the formulary procedure in its various stages of development, and, finally, the extraordinary procedure suited to the bureaucratic régime of the late Empire. The book has no index, but there is a full table of contents⁷.

(8) *Manuel des Institutions Juridiques des Romains*.

⁴See also Theodor Mommsen, *Römisches Staatsrecht*¹ (Leipzig, S. Hirzel, 1871-1888. 3 volumes in 5. Pp. xxvii, 708; xv, 742; xiv, 743-1171; xviii, 832; xiv, 833-1236). Special studies in Roman law are in Mommsen's *Gesammelte Schriften* (Berlin, Weidmann, 1905-1913. 8 volumes), especially the first three volumes, under the subtitle, *Juristische Schriften* (Pp. vi, 479; viii, 459; xii, 632).

⁵See note 2, above. Older works by the same author are *Histoire de l'Organisation Judiciaire des Romains* (1901) and *Mélanges de Droit Romain* (2 volumes, 1912, 1923).

⁶See, for example, James Leigh Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford: At the Clarendon Press, 1912. 2 volumes. Pp. xxi, 245; 287); Rudolph Sohm, *The Institutes*², Translated by J. C. Ledlie (Oxford: At the Clarendon Press, 1907. Pp. xv, 606); and the books named in Numbers 7, 8, 13, 14, 16, 17, below.

⁷In the closing days of December, 1933, I received at Lexington, Kentucky, a copy of a book entitled *Reminiscences of an American Scholar, The Beginnings of Columbia University*, by John W. Burgess, Sometime Ruggles Professor of Political Science and Constitutional Law in Columbia University (Columbia University Press, 1934). This is a posthumous work (the author died in 1931).

In 1871 Mr. Burgess was a student at the University of Berlin. At that time he took the following courses (122): "... Greek history with Ernst Curtius, Roman history with Theodore Mommsen, German and Prussian history with Gustav Droysen, and later with Heinrich von Treitschke, philosophy with Eduard Zeller, logic with Hermann Helmholtz, and public law with Rudolf von Gneist".

Of the lectures of Curtius and Mommsen Mr. Burgess wrote as follows (122-123):

"... The lectures of Ernst Curtius were, every one of them, finished orations which would have been a credit to Demosthenes himself, and yet I liked Mommsen better. It took me a long time to discover why, but it came to me vividly on the occasion of the last lecture I ever heard from him. At the close of that lecture, he said, as nearly as I can remember his words and as I wrote them down at the time in my notes: 'Gentlemen, this is my view of Roman history in the period of the Empire as nearly as I can make it out from the original remnants at our command. I believe it to be substantially correct, but to assert that it is so would be to speak from a summit of scholastic arrogance and self-consciousness <self-confidence? C. K.> to which I have not yet attained'.

It struck me at that moment that this was the explanation of my preference for Mommsen over Curtius, despite the classic elegance and eloquence of the latter. Mommsen was the more objective in his aims and methods, the more altruistic in his thought. He placed truth before glory and could never transform a fragment of fact into a full proposition of ostensible certainty without giving his hearers the line of division between that which he had discovered as fact and that which he had supplemented from logic or imagination. I had heard Droysen say that 'Lord Macaulay would sacrifice exact truth, at any time, to a well-rounded sentence'. This was something which Mommsen simply could not do. I would not say that Mommsen had any lack of appreciation of a high historic imagination. He had such an imagination himself in fullest measure, but he would never allow his hearers or his readers to confound that part of his historic representations with that part upon which it was founded. I would not be willing to say that Curtius did do this. I will only say that I was not so conscious, in listening to him, of intellectual honesty in the search for truth and nothing but truth as in the case of Mommsen".

These utterances were particularly interesting to me because they come from a man who was not specially interested in the Classics as such. He says [9], "... Classics were, however, not my favorite study" C. K.>.

By Édouard Cuq, Professor in the Faculty of Law of the University of Paris (Paris, Plon-Nourrit et Cie, 1917. Pp. viii, 938).

The author of this book declares in his Preface that the study of Roman law should continue, although the World War brought forth new and different conceptions of law, government, and civilization, and certain phases of Roman law seem to have encouraged and justified pre-War autocracies. In some degree, this book is a revision of one⁶ of the author's many earlier works, though this fact is revealed more by comparison of the two books than by his own admission. 'The Roman law', says M. Cuq, 'is one of the essential elements of our civilization. . .'; hence study of that law should be the point of departure for juridical education, especially since such study 'penetrates deeply into the soul of France. . .'. But apologetic disappears from the pages which follow the Preface.

In organization and in contents this book resembles Girard's, classified bibliography, introductory chapter, chapter-titles, definition of terms, and all; but French equivalents for Latin terms are more often given, there is in greater degree investigation of origins of legal institutions as well as exposition of the law, and more attention is devoted to the administration of justice. M. Cuq's specialized familiarity with the whole range of historical jurisprudence has made his work, in some measure, a study in comparative jurisprudence. Book II, of a hundred pages, on The Family, is of special value even to those who are not generally interested in the law. A full index, in addition to a detailed table of contents, greatly increases the convenience of the book.

Both Girard and Cuq, each in a brief introductory chapter, reveal an interest in modern adaptations of Roman law, which has led other scholars to prepare more detailed works on the subject. These later works emphasize the importance of Roman law in the modern world, and so they are proof that interest in the legal institutions of ancient Rome is not necessarily antiquarian only. Mommsen's work on 'Roman Criminal Law', Girard's 'Elementary Manual of Roman Law', and Cuq's 'Manual of the Juridical Institutions of the Romans' (Numbers 6, 7, and 8, above) are more concerned with Roman law for its own sake. But a few outstanding works trace the continuity of Roman law in the western world and show how and why Roman legal concepts, terminology, and procedure have been retained in modern legal systems.

(To be concluded)

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THE SECONDARY SCHOOLS OF GERMANY WITH SPECIAL REFERENCE TO THE TEACHING AND THE STUDY OF LATIN AND GREEK¹

The educational policy of the old days set up in Germany a dual system, consisting, on the one hand, of the Secondary Schools and the Universities, and, on

the other hand, of the Volksschulen or Elementary Schools. Those that attended the Elementary Schools were shut out from the Secondary Schools and the Universities. In their social life the two classes of pupils never mingled. For a long time, even before the breaking out of the World War, the people were dissatisfied with the existing educational conditions. Since the close of the World War great changes have been made in the Secondary Schools in Germany.

In speaking about the present educational system in Germany, Dr. Charles H. Becker, said, in November, 1930²:

"...So long as humanity is made up of men and women, and not of machines that may be ordered from some factory or other, so long will we have to deal with personal aptitudes of various kinds, demanding a corresponding variety in our system of teaching. . . the student who gives evidence of high-class mental powers must be given a chance to develop them, no matter to what social class he may belong. . ."

It costs fifty dollars a year to attend a Secondary School in Germany, for no government in Europe will support a costly Secondary School system entirely on public funds.

The educational slogan in the United States is 'An open road for everybody', but in Germany it is 'An open road for the capable'. To-day, those who in Germany may receive a secondary education are to be rigidly selected from the Elementary Schools, but social status is not to be a factor in determining who may be selected. To break down the barrier between the social classes the government passed a law that all pupils must attend one Common School, called the Grundschule. The children of all classes are to attend such Schools for at least four years. Thus with one blow the Vorschulen (or schools preparatory to the Secondary Schools) were abolished.

The Grundschule, the Common School for all children in the first four years of school life, has the task of giving to the children who attend it a basic training which shall fit them for instruction in the Volksschulen and in the Middle Schools and the Secondary Schools.

The upper four years of the Volksschule constitute the finishing school for those children who, after the completion of the compulsory school period, will enter practical life and will receive their further training chiefly in Vocational Schools. All pupils that leave school at the age of fourteen years must attend a Vocational School, or a Continuation School, from the age of fourteen to the age of eighteen, i. e. for four years, for at least eight hours a week.

The Middle Schools have a six-year course superimposed on the four-year course of the Grundschule. From these Middle Schools pupils can be transferred to some of the Secondary Schools. In the Middle Schools a tuition fee of ten dollars per year is imposed.

Boys and girls who wish to enter a profession must enter one of the Secondary Schools after the first four years in the Common School (Grundschule). The Secondary School period of Germany is longer than that of any other nation. The Secondary Schools receive pupils at the age of ten, give them a nine-year course, graduate them at the age of nineteen, with scholastic attainments equivalent to those gained by students completing two years in an American College.

The Classical Gymnasias were established during the Middle Ages to prepare boys for the learned professions. In spite of protests, Greek and Latin remain important in the curricula of these Gymnasias, although most modern subjects have found a place in

College, Columbia University, April 28-29, 1933.

¹It is possible that by this time, May, 1934, some changes have occurred in the educational system of Germany. In any case, Miss Hess's paper holds true of that system as it was up to the beginning of the academic year 1932-1933. C. K. >

²See School and Society 32.683. For information about Dr. Becker's paper see item 4 in the Bibliography given in note 3, below.

⁶Édouard Cuq, *Les Institutions Juridiques des Romains* (Paris, Plon-Nourrit et Cie, 1891. Pp. xxxv, 768).

¹This paper was read at the Twenty-sixth Annual Meeting of The Classical Association of the Atlantic States, held at Barnard

their program of studies. All pupils who leave the Classical Gymnasias to study at the Universities in the fields of philosophy, law, certain phases of teaching, and theology must be equipped with some Latin and some Greek. If the Classical Gymnasias do not perform this service, the student is handicapped at the University.

In the Classical Gymnasias Latin is studied for seven periods a week for three years, for six periods a week for two years, and for five periods a week for four years. Greek is studied for seven periods a week for six years, unless a second modern language takes the place of Greek. In the first three years the time is spent in gaining a thorough knowledge of the fundamentals of the Latin language. In the reading-book are included tales and descriptions of Roman life that can be made serviceable for work in ancient history. The subject-matter is kept as close as possible to the original Latin. In the fourth and the fifth years use is made of Caesar's Gallic War. In the reading-book used are included passages from Phaedrus and Ovid's *Metamorphoses*. In the sixth year the reading-book contains selections from Ovid, Phaedrus, Livy, Pliny, Florus, Cato, and Cicero. In the seventh year passages are read from Vergil, Sallust, Caesar, Cicero, Seneca, Horace, Tacitus, Quintilian, Catullus, Tibullus, and Lucretius.

In the Classical Gymnasias great emphasis is placed on guidance in preparation of lessons, on frequent practice in sight-translation, and on translation from the German language into the Latin language. The oral as well as the written translations into Latin are connected with the books read in class. The chief points kept in view in the reading of Latin are a good translation into German, an exact knowledge of the constructions, and comprehension of the subject-matter. The chief characteristic of the teaching of Latin is thoroughness within clearly prescribed limits. The first two years of the teaching both in Latin and in Greek are devoted to a slow and painstaking mastery of the fundamentals of grammar. In this study specially constructed textbooks are used. But, when the fundamentals have been mastered, the sole ends are reading and understanding of the classical authors.

Pupils on beginning the study of Greek have had three years of instruction in Latin. Therefore special study of Greek syntax is limited to what is absolutely essential for understanding the reading-matter. Introduction to the reading of Greek is through the medium of a suitable reader. This contains selections from Greek mythology and Greek history. It is followed as early as possible by the reading of Xenophon's *Anabasis* and Aesop's *Fables*. In the third and the fourth years the reading-matter includes the *Odyssey*, selections from Herodotus, Plutarch's *Lives*, Plato, and Xenophon. The reading-matter in the last two years includes selections from the *Iliad*, Plato, Thucydides, Sophocles, and Aeschylus.

The study of Greek is discontinued in the Realgymnasias. A modern language is substituted for Greek. More attention is devoted to mathematics and science in these Schools than in the older classical Schools. In the first three years the pupils have seven periods of Latin per week, in the fourth and the fifth years four periods a week, in the sixth, the seventh, the eighth, and the ninth years three periods a week. The scope of instruction is similar to that in the Gymnasias for the first three years, but the study of grammar is limited in amount in accordance with the shorter time-allowance. The method is the same in spirit. Provision is made for periodical translation from Latin into German, but none for translation from German into Latin. The chief difference lies in the amount of reading prescribed.

The modern language is the fundamental language in the Reformrealgymnasium. Latin is taught for four periods a week, during the last four years. The entire instruction in Latin from the beginning is organ-

ized for the main and ultimate purpose of translating from Latin into German. The course contains late Latin and original Latin as soon as possible.

The Deutsche Oberschule, which is in the ideal sense a Higher Elementary School, is concerned primarily with the study of German life. One foreign language is required. Latin may be chosen as a second foreign language, to be studied for four years, for four periods a week. The main purpose of the study of Latin in the Deutsche Oberschule is to gain the ability to appreciate the simple works of Latin literature.

The Oberrealschule is a school devoted to the study of modern science and contemporary life. Enough Latin is given to satisfy pupils interested in meeting that requirement for certain University courses.

In the Oberlyzeum, the girls' Secondary School, Latin is studied in the last four years of the nine-year course. The periods have been reduced to four and two a week. In the Realgymnasiale Studienanstalt Latin is studied for six years, in the first two years for six periods a week, in the last four years for four periods a week.

The regulations of the Gymnasias apply to Gymnasiale Studienanstalt, as the name implies, in so far as the situation permits. Latin is studied for a period of six years, first for seven periods a week, later for six periods a week. Greek is studied for four years, for eight periods a week. In the first two years there is not much connected reading of Latin. In the last four years, instead of translation into Latin there are systematic exercises in translation from Latin.

There is a school law that to teachers must be allowed the freedom in the conduct of instruction which is necessary for gaining successful results in teaching and in education. Necessarily there are great differences in the methods and the means, but all schools of the same type have the same aim, prescribed by the State authorities. For pupils that wish to study Latin instruction in Latin is to be provided at proper places. The necessary time for the study of Latin is to be secured for girls by partial exemption from home economics, for boys by exemption from manual training. Exemption from physical training is, however, not permitted. Only pupils of whose steady progress there is no doubt may take Latin.

The Secondary Schools of Germany have been the pride of the nation. They are well organized and have high academic standards. They are distinguished for thoroughness and erudition. They have often been criticized for the intellectual burden that has been placed by them upon the youth. New types of schools have been opened with new courses of study. It is not the custom to introduce both the classical and the scientific courses into single institutions and to allow pupils in such institutions to select subjects from either course. The examination taken at the end of the nine-year course, success in which guarantees entrance to a University, is the basis upon which reforms are made in the curricula of the Secondary Schools. The State authorities direct education in the Secondary Schools as well as in the Universities. Therefore the linking of interests is unavoidable. The Universities look with disfavor upon suggestions for Secondary School reform. They are well enough satisfied with the students that they have received and are unwilling to risk any change in standards³.

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³In the preparation of this paper I used, besides the results of personal observation and inquiry in Germany, the following books and articles:

- (1) Reorganization of Education in Prussia, Based on Official Documents and Publications, Translated by I. L. Kandel and Thomas Alexander (Teachers College, Columbia University, Bureau of Publications, 1927).
- (2) Thomas Alexander and Beryl Parker, *The New Education in the German Republic* (New York, The John Day Company, 1929).
- (3) Karl Wilker, *New Educational Experiments in Germany*, School and Society 30, 358-363 (September 14, 1929).
- (4) Carl H. Becker, Professor of the University of Berlin, Per-

REVIEW

Selected Essays. By Anne C. E. Allinson. With a Biography by Gertrude Slaughter. New York: Harcourt, Brace and Company (1933). Pp. xviii, 286. \$3.00.

The cause of the humanities in America lost a warm friend and a gifted exponent by the tragic death of Anne C. E. Allinson (Mrs. Francis Greenleaf Allinson) in the summer of 1932. Those who have already experienced the charm of Mrs. Allinson's earlier books and papers¹ will welcome this edition of Selected Essays from her pen, a tribute to her memory arranged at the instance of Pembroke College in Brown University, where for seven years she had served as Dean of Women, after three years spent in a similar capacity (and as Assistant Professor of Classical Philology) at the University of Wisconsin. The essays in the volume under review range in date from 1903 to the last year of Mrs. Allinson's life. With one notable exception (Essay 4), they are reprinted from various periodicals for which they had been written.

The following detailed presentation of the contents will indicate the breadth and the character of the book².

Prefatory Note, <by> Harry Lyman Koopman <Librarian Emeritus of Brown University> (v); <Table of> Contents (vii-viii); Anne Crosby Emery Allinson, <a biography>, by Gertrude Slaughter (ix-xviii); <Part> I (3-65): 1, The Acropolis and Golgotha [1916] (*Atlantic Monthly*, v. 118: 316-323) (3-21), 2, Seed-Corn and Harvest [1918] (*Yale Review*, v. 7, n. s.: 828-836) (22-33), 3, Apollo Borealis [1919] (*N. American Review*, v. 209: 107-116) (34-49), 4,

manent Secretary and Minister of Education of Prussia (1919-30), The Present Educational Situation in Germany, School and Society 32.679-691 (November 22, 1930). This paper gives the first of three lectures on Secondary Education and Teacher Training in Germany, delivered at Teachers College, Columbia University. This lecture was delivered on November 10, 1930.

(5) Harold H. Punke, Recent Developments in German Secondary Education, *The School Review* 38 (1930), 576-584, 680-693.

(6) Richtlinien für die Lehrpläne der Höheren Schulen Preussens, Neue Ausgabe, Besorgt von Hans Richert, Ministerialrat im Preussischen Ministerium für Wissenschaft, Kunst und Volksbildung (Berlin, Weidmann, 1931).

(7) Staatliches Gymnasium zu Göttingen: Bericht über das Schuljahr 1929/30, Erstattet vom Leiter der Anstalt, Dr. Eduard Lisco, Studiendirektor (Göttingen, Friedrich Hänsch, 1930).

(8) Die Preussischen Sparmassnahmen und die Bildungsarbeit der Höheren Schule, Sonderabdruck aus dem Deutschen Philologen-Blatt, 1931, Nr. 39 (Leipzig, Quelle und Meyer, 1931).

¹Roads from Rome (New York: The Macmillan Company, 1913); Children of the Way (Harcourt, Brace and Company, 1923); With Francis Greenleaf Allinson, Greek Lands and Letters (Boston: Houghton Mifflin Company, 1931).

²A paper by Mrs. Allinson, entitled The Poet's Toll, which dealt primarily with Propertius, but also with Maecenas, Horace, and Vergil, I discussed in THE CLASSICAL WEEKLY 5.25-26 (October 28, 1911). This paper was later included in Roads from Rome. This volume I noticed in THE CLASSICAL WEEKLY 16.34 (October 30, 1922). Children of the Way was reviewed by Professor Grace H. Goodale, THE CLASSICAL WEEKLY 21.158-160. The first edition of Greek Lands and Letters was reviewed by William E. Waters, THE CLASSICAL WEEKLY 3.147-148. C. K. >

<?The material relating to the dates at which the various essays were originally published, and to the place of original publication, is given exactly as it appears in the <Table of> Contents of the volume. C. K. >

Childlessness; The Last Quarter [1932] (50-65); <Part> II (69-167): 5, Faces in the Roman Crowd [1915] (*Yale Review*, v. 5, n. s.: 146-165) (69-95), 6, Virgil and the New Patriotism [1917] (*Yale Review*, v. 7, n. s.: 140-158) (96-120), 7, A House in Athens [1917] (*Atlantic Monthly*, v. 119: 523-526) (121-128), 8, The Acropolis Express [1920] (*Unpartizan Review*, v. 13: 143-154) (129-144), 9, Anima Candida [1930] (*Atlantic Monthly*, v. 146: 83-92) (145-167); <Part> III (171-221): 10, The American College Course [1903] (*Educational Review*, v. 26: 494-502) (171-183), 11, The Present and the Future of Collegiate Coeducation [1909] (*The Nation*, v. 88: 404-406) (184-197), 12, The Muses on the Hearth [1914] (*Unpopular Review*, v. 2: 189-196) (198-207), 13, On the Distaff Side [1916] (*Unpopular Review*, v. 5: 117-126) (208-221); <Part> IV (225-286): 14, Juventus Christi [1917] (*Atlantic Monthly*, v. 119: 594-601) (225-242), 15, For Righteousness' Sake [1918] (*N. American Review*, v. 207: 102-110) (243-255), 16, Fear, Courage, and Christianity [1918] (*N. American Review*, v. 207: 426-432) (256-267), 17, Enlarge the Place of Thy Tent [1918] (*Atlantic Monthly*, v. 122: 775-782) (268-286).

The essays on themes principally classical are grouped together in Part II. But in some of the other essays Mrs. Allinson has delved deep into her treasured store of classical literature (as, for example, in The Acropolis and Golgotha, Apollo Borealis, and Juventus Christi), and in almost all of them there are here and there flashing phrases that testify to the same heritage. Of the essays in Part II, Faces in the Roman Crowd is a little classic which stresses the evidence of the inscriptions as a supplementary source of knowledge of the real Roman people. Anima Candida was Mrs. Allinson's contribution to the memory of Vergil for the bimillennial anniversary of his birth. Written in the style of her earlier essays contained in Roads from Rome it is a sympathetic, appreciative interpretation that is half-imaginary, but wholly faithful in spirit. A brief quotation from its conclusion will well illustrate the subtle beauty of Mrs. Allinson's writing. Horace is represented as finishing a letter to Maecenas (166-167):

"Ah, yes! Our Virgil was the whitest soul among us. Greed and lust and meanness slunk from his sight. If I said so in our youth, how much better do I know it now! One day on the shore at Naples, he read me his lines on the woodland princess, martial Camilla. As I listened—we shall never hear that voice again—I thought to myself that in her he had unconsciously projected his own spirit, in which virility and virginity met and mingled. I do not wonder that the Neapolitans called him Parthenius!

I have been writing with my own hand, as you see. The autumn wind is rising, prophesying rain. The brazier grows cold. My friend, my guard and my defense, such part of my heart as our Virgil has not taken with him I dedicate to your service. Farewell!"

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